IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Appl. No. 244 of 2005

Chhagan Lal Purohit
S/o Late Shri Ram Gopal Purohit
R/o Behrod, Near Mahesh Vidyapeeth
P.S. Behrod, District Alwar (Rajasthan) ……...Applicant

Versus

1. State of Uttaranchal
2. Jawahar
   S/o Shri Kanhaiya Lal
   R/o Devpura Ashram, P.S. Kotwali
   Tehsil & District Haridwar ……..Respondents.

Shri Lokendra Dobhal, learned counsel for the applicant.
Shri Pankaj Miglani, learned counsel for respondent No. 2.

Hon'ble Prafulla C. Pant, J

Heard learned counsel for the parties and perused the record.

By means of this petition, moved under Section 482 of Code of Criminal Procedure, 1973 (for brevity hereinafter referred as Cr.P.C.), the petitioner has prayed that the proceedings of criminal case No. 500 of 2004 Jawahar Vs. Chhagan Lal Purohit, relating to offence punishable under Section 138 of Negotiable Instruments Act, 1881, pending before Ist Additional Civil Judge (Jr. Div.)/Judicial Magistrate, Haridwar, be quashed.

The petitioner has alleged that on 22.02.1983, a trust was created in the name of Purohit Trust at Kusba Behrod and the same was got registered. On 09.11.2003, one Nemi Chand Purohit was appointed as President of said trust and Balram Purohit was appointed as Secretary. However, it is alleged that President Nemi Chand Purohit, committed irregularities and fraud, as such, he was removed from said post in the meeting of trustees held on 01.03.2004. It is further alleged in

the petition that the entire record of the trust remained with Shri Nemi Chand Purohit against whom a First Information Report of the offences punishable under Section 420, 406, 467, 468, 469 and 471 I.P.C. was lodged. It is further alleged by the petitioner that Nemi Chand Purohit, got forged signature of the petitioner and issued cheque in his name, and when the same was bounced, he got sent notice dated 01.06.2004 under Section 138 of Negotiable Instruments Act, 1881. Thereafter, respondent No. 2 Smt. Santosh Agrawal to whom said cheque was issued, filed an impugned complaint in which the petitioner appears to have been summoned after recording the statement of complainant under Section 200 of Cr.P.C. and that of the witnesses under Section 202 of Cr.P.C.

It is argued on behalf of the petitioner that petitioner is an old aged person of 78 years. And he is innocent in the case and falsely implicated due to the acts of the ousted President Nemi Chand Purohit. This Court is of the view that the scope of Section 482 Cr.P.C. is a limited one. And it is only when the ingredients of the offence are not made out even after accepting the evidence of the complainant recorded under Section 200 of Cr.P.C. and that of the witnesses under Section 202 of Cr.P.C., as true, the proceedings can be interfered with. As far as the innocence of the accused is concerned, it is for the trial court to examine whether the offence is proved or not after recording the evidence adduced by the complainant during the trial. With half-baked evidence, it is not just and proper on the part of this Court to observe whether the petitioner is innocent or not.

In the circumstances, this petition deserves to be disposed of with the observation that all pleas raised by the petitioner as to his innocence, can be raised before the trial

court. This Court feels it just and proper to further observe that considering the old age of the petitioner if he appears before the trial court, his bail shall be heard without unreasonable delay. It is further observed that the trial court shall consider to dispense with the attendance of the accused to permit him to be represented through pleader in the spirit of Section 205 of Cr.P.C. whenever personal appearance is not necessary. With these observations, the petition is disposed of.

Dt. 09.10.2006 **(Prafulla C. Pant, J.)**

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